

ELEMENTS OF THE STUDY

- 1. Identify the types and amounts of information that are collected from and about individual debtors, as well as analyzed and disseminated, in personal bankruptcy cases.**

Comments - Courts and Government:

- < (U.S. Courts - Mary Jo Obee) - Personal identifiers such as name, physical and e-mail addresses, telephone numbers, social security and tax identification numbers, photographs, and any account numbers, have been found to have the strongest sensitivity and are protected by the strongest privacy interest. Other types of sensitive information include an individual's medical services (including debts owed), financial condition, religious or other affiliations, and domestic information, including anything concerning children.

It is difficult to quantify the value of information collected in bankruptcy. However, the questions regarding the collection and uses of data should not be influenced by how valuable access to the information may be for other uses, commercial or academic. In essence, public money should not be spent for private purposes.

Comments - Bankruptcy Attorney Associations:

- < (National Association of Consumer Bankruptcy Attorneys) - Pursuant to 11 U.S.C. §521 and Federal Rules of Bankruptcy Procedure (FRBP) 1007, the debtor is required to submit the following types of public and non-public record data:

Public Record Data

- all names used by the debtor within six years of the bankruptcy filing;
- debtor's social security number and employer identification number, if engaged in business;
- all addresses of the debtor within two years of the bankruptcy filing;
- list of all assets of the debtor, including bank accounts (perhaps with account numbers), insurance policies, shares of stock/stock options or bonds, retirement plans and annuities, and trust interests;
- lists of all debts of the debtor (with account numbers, dates incurred, and amounts owed), including debts which will survive bankruptcy (e.g., non-dischargeable income taxes, student loans, child and spousal support), debts which will be wiped out in bankruptcy, and debts of a non-filing spouse for which the debtor may be liable under state law;
- names and addresses of non-filing co-debtors;
- projected monthly income of the debtor (and the debtor's non-filing spouse in chapter 12 and 13 cases), including gross income and deductions, job title, name and addresses of employers, and length of employment;

- projected itemized monthly expenses, including sensitive items such as religious donations, fines, and specialized school expenses;
- debtor's income and sources of income for the last two years;
- names and addresses of relatives or other insiders who have received payments from the debtor within the last year;
- debtor's fire, theft, casualty or gambling losses within the last year;
- debtor's payments for bankruptcy consultations or services within the last year;
- locations of safe deposit boxes open with the last year;
- names and addresses of all businesses the debtor has been involved in operating within the last two years;
- fees paid by the debtor to the debtor's attorney within a year of the bankruptcy;
- chapter 13 creditors' proof of claim with amount, account number, category and other documentation; and
- in Motions for Relief from the Automatic Stay, detailed information regarding a chapter 13 debtor's payments or failure to make payments is often filed with the court and served on the trustee (Motions for Relief are infrequent in chapter 7 cases because of the limited time between filing and discharge).

Non-Public Record Data

- in chapter 7 assets cases, copies of the debtor's tax returns (including the one filed after the bankruptcy filing), W-2s, 1099 Forms, paycheck stubs, invoices, receipts, and bank statements;
- debtor's payments into chapter 13 plans;
- Chapter 13 debtor's address and employer's name and address;
- names, addresses, account numbers of creditors which have filed claims in the chapter 13 debtor's case;
- amounts and categories of chapter 13 creditors' claims; and
- payments to chapter 13 creditors.

The most sensitive types of data include: a debtor's name and address, social security number; current address; employer's name and address; account numbers of bank accounts and safe deposit boxes; balances, descriptions of security with regard to debts which will survive bankruptcy, names and addresses of non-filing co-debtors; names and ages of non-filing support payees; job title, employer and income of non-filing spouse; names and ages of dependants; and sensitive budget items such as religious donations, fines, and specialized school expenses

Comments - Bankers Associations:

< (American Bankers Association) - All deposit and credit accounts, identifying account numbers, balances in savings and investment accounts, amounts owed on credit accounts, all sources and amounts of income, types and values of non-monetary assets, a budget showing the debtor's regular expenses, social security number, as well as other relevant financial or living expense information becomes part of the public record after filing for bankruptcy. We do not perceive any greater sensitivity of any particular class of data that would justify excluding it from the public record or limit its availability.

(America's Community Bankers) - The public record contains financial information as part of schedules attached to bankruptcy petitions and related motions, including such items as a list bank accounts and identifying numbers, credit card account numbers, social security numbers, balances in bank accounts, balances owed creditors, income, a detailed listing of assets and budgets showing the individual's regular expenses. The non-public information, held by the trustee in administering the case, includes additional schedules, tax returns, supporting information concerning the value of property, depositions taken to ascertain the propriety of certain filings, and information relative to investigative reports. The amount of the data varies with the size and the complexity of the bankruptcy.

Comments - Privacy Rights Groups:

< (Privacy Rights Clearinghouse) - Social security numbers, credit card numbers, loan accounts, dates of birth, and bank account numbers represent a gold mine to dishonest individuals as well as the rising number of organized criminal enterprises and gangs that specialize in systematic identity theft. Social security numbers are the most common form of personal information associated with identity theft, and can be used to obtain a driver's license, open a new credit account, apply for a loan, and obtain a copy of the victim's credit report. This sensitive information should be redacted, as such scams not only victimize the debtor, but the bankruptcy courts as well by clogging the system with fraudulent filings. As to the value of the information, with the widespread use of the Internet, almost anyone can anonymously obtain the most personal details of an individual's life with out limitation on how the information is used.

< (Center for Democracy and Technology) - The principles found in the Code of Fair Information Practices, not the sensitivity of the data, should be the basis for determining whether information provided during a bankruptcy process is available for other purposes. Certain types of information can place individuals at risk for other harm. For example, address information could be harmful to individuals fleeing domestic abuse. In other cases, the availability of certain kinds of personal information can subject individuals to financial loss.

Comments - Credit Unions/Associations:

- < (Iowa Credit Union League) - The types and amounts of information credit unions collect from individual debtors is minimal. Credit unions rely on credit reports to a great extent for their bankruptcy information.
- < (Ohio Credit Union League) - The case number, filing date, attorney information, reason for the bankruptcy, and the individual's intention regarding their accounts are ascertained from bankruptcy data.
- < (New Jersey Credit Union League) - Debtors are required to file personal information such as social security numbers, birth dates, account numbers, identification numbers, financial balances and asset lists as a routine part of commencing a bankruptcy case.

Comments - Academia:

- < (Professor Karen Gross) - In my view, §107 needs to be revisited and consideration should be given to: 1) what is and should be meant by "public" data; 2) whether the exceptions to publicness are sufficient; and 3) whether the burden of proof needs to be shifted. I believe that the exceptions from "publicness" needs to be broadened and the burden of proof should not be on the entity seeking to invoke privacy. We also need to reassess what data we are collecting, and the format in which that data can and will be made available to the different audiences.

2. Current practices, and practices envisioned for the future, for the collection, analysis, and dissemination of information in personal bankruptcy proceedings.

Comments - Courts and Government:

- < (Federal Trade Commission) - The Study Agencies noted that some trustees and creditors are considering compiling information contained in bankruptcy records electronically for easier administration of bankruptcy cases in which they have a claim. They may also envision some commercial use of this information. The FTC believes that the commercial use of highly personal and sensitive non-public data should be prohibited. In addition to privacy concerns, the non-public data should not be used for purposes other than for administering the bankruptcy. The disclosure of non-public data, as with public data, may facilitate identity theft and other illegal conduct. In addition, trustees serve as a result of governmental action and thereby, the use of non-public data for commercial purposes appears to fall outside the scope of their responsibilities. Further, trustees serve as fiduciaries and thereby, owe a loyalty to the estate and all participants in the system. Finally, the commercial sale of such information by a trustee may implicate concerns under the Fair Credit Reporting Act.

- < (U.S. Courts - Mary Jo Obee) - Bankruptcy Court's currently use two methods to collect data, in paper documents or in electronically filed documents. Of the information collected from the petition and adversary cover sheets, proofs of claim, and titles of pleadings, some are aggregated in a database and are available for viewing. One can search the database for specific names, debtor, judge, trustee, and attorney as well as social security and tax identification numbers.

There are several changes being considered by the courts. First, it is anticipated that all filings will slowly become electronic and paper will become a smaller portion of the source of information collection. The second change contemplated involves charging fees to file electronically and for access to all electronic court records. We believe that charging for access will diminish the accessing of bankruptcy records by the general public.

The transformation from paper to electronic records will provide the ability to conduct full text searches of every document in the database. This will make hiding the personal identity of a debtor or creditor more difficult. This upcoming change in search abilities should narrow the choice between merely stripping personal identifiers from data and making all data available to the general public to a determination of whether access by the general public to documents with sensitive information should only be allowed on a showing of a particularized need.

Comments - Bankruptcy Trustee Organizations:

- < (National Association of Chapter Thirteen Trustees) - In the near future, the National Data Center (NDC) will make status information, entered directly by trustees, available over the Internet to parties in interest. In doing so, the NDC will contract with trustees regarding the following: 1) the trustee will agree to transmit selected status information to the NDC on a regular basis; 2) the trustee will provide debtors notice of the fact that their status information will be available on the Internet by parties in interest; 3) the trustee will agree to immediately investigate and, if necessary, rectify alleged errors in the data reported by the debtor; and 4) the trustee will work towards a unified method of identifying national creditors among all trustees.

The NDC, in turn, will contract with creditors who subscribe to their Internet site to ensure that creditors agree to: 1) only use this information for their collection of a claim against the bankruptcy estate; 2) not sell this information to third parties or to use such information for the purpose of marketing, advertising, extending credit, etc.; 3) move towards using a single identifying number and/or address when participating in bankruptcy cases; and 4) submit to an internal or external audits.

The NDC will establish and maintain a secure electronic database to prevent unauthorized access and will limit displayed information, and particularly personal identifiers (e.g., social security number) to the minimum amount to allow creditors to monitor and assert their claims.

Comments - Bankers Associations:

- < (American Bankers Association) - Presently, various commercial companies regularly collect basic public data regarding new bankruptcy filings, check it against the debtor's credit histories, and provide notice to listed creditors subscribing to such a service that a borrower has filed for bankruptcy. This rapid availability of information assists creditors in their timely assertion of their rights in the bankruptcy process as well as in avoiding adverse actions against the debtor (e.g., repossessions, garnishments, collection calls) through an unintended violation of the automatic stay. We believe this collection and dissemination of data benefits all in the process, and the use of available and future information technology should be used to improve such data flows.
- < (America's Community Bankers) - Some jurisdictions are experimenting with electronic filing of all aspects of the court system, including bankruptcy. Although the principal opposition to electronic filing has been the cost of converting the paper system to an electronic system, the privacy issue may become more a prominent issue.

Comments - Information Service Companies:

- < (The Individual Reference Services Group) - Individual reference service providers typically obtain public record information from a supplier who has collected and compiled it. The information is in turn used to create individual reference service products for distribution. Bankruptcy records are used by individuals and businesses to protect their financial interests by monitoring dockets, access filings, and preparing for cases. This information is especially helpful to out-of-state creditors efforts to protect their interests.

- < (Dolan Media Group) - The primary source for the information gathered is the court's computer system (Pacer). The information is then used to alert creditors of a consumer's bankruptcy and thereby, allow creditors to quickly remove bankrupt consumers from their call queues and collection letter mailings. Unrestricted access to this information will allow for the continued service to creditors and debtors in an efficient and cost-effective manner.

Comments - Credit Unions/Associations:

- < (Ohio Credit Union League) - Access to financial information is obtained from the court by requesting a copy of the debtor's schedules or by reviewing the file itself. Account holders at credit unions are both members and owners and as such their relationship with the credit unions will usually differ from that with other financial institutions. As a result, it is not unusual for the credit union to collect information from the debtor directly, most likely by telephone. It is anticipated that this practice will continue.

- < (Navy Federal Credit Union) - Information is currently collected by the courts, direct-free Internet access, controlled Internet access via passwords administered by trustees, and a commercial database on a fee-per-use basis.

3. The needs of various parties for access to financial information in personal bankruptcy cases, including specifically which individuals or entities require access to which particular types of information, for what purposes, and under what circumstances.

Comments - Courts and Government:

- < (U.S. Courts - Mary Jo Obee) - The primary entities who access and use bankruptcy information are not using the information for purposes consistent with the public interest, but rather for commercial purposes.

The following information should remain “public”: case number, location of filing, chapter, name and other information regarding debtor’s attorney, name and other information regarding the trustee, name of the judge, logistics regarding all hearings and meetings, listing of docket entries, dates of discharge, conversion, or dismissal, and possibly legal descriptions of real property and vehicle identification numbers.

Unless a debtor has been determined to have engaged in credit fraud, his/her social security number, bank account numbers, or other account numbers, should not be made available to the general public.

Comments - Bankers Associations:

- < (American Banker’s Association) - Detailed bankruptcy information and electronic information exchange enables creditors to: 1) make a threshold determination of whether a lender has a stake in a particular bankruptcy; 2) quickly ascertain the accuracy of the filer’ claim; and 3) communicate efficiently with trustees and obtain information regarding case status and payments made.

Lenders need access to all available debtor financial information in the public file, and to non-public information, if it is a party to the bankruptcy, including all account types, debts, income sources, expenses, etc. In particular, the debtor’s full name, aliases, last known address and phone numbers, and social security numbers are essential for creditors to assert their legal rights.

The interests of all parties in bankruptcy would be well served if enterprises could collect, compile, and electronically disseminate information about bankruptcy cases. However, support efforts to protect the non-public, personal information of consumers of financial services, and public policies to properly balance the needs of legitimate information sharing with the obligations to protect consumer privacy. It is necessary to maintain non-public data in its current form and information in the public file should remain available to the public.

- < (America's Community Bankers) - Access to information in the public file, and to non-public information if an interested party to the bankruptcy is important is necessary because it assists community bankers in determining the actual size of the debtor's estate, accuracy of the information provided, the number of creditors with legitimate claims to the debtor property, and the likelihood of recovery of their claims. We support efforts to protect the non-public, personal information of consumers of financial services, as well as public policies that balance the legitimate information sharing needs of financial institutions with the obligation to protect consumer privacy. However, we are concerned that a community or savings bank not listed as a creditor in a bankruptcy filing will not have sufficient information to determine if the person filing for bankruptcy is a potential debtor. To make such determinations, banks need access to information currently available in the public file. If a bank is a party to the bankruptcy, it also needs access to non-public information.

Comments - Privacy Rights Groups:

- < (Privacy Rights Clearinghouse) - While recognizing the long-standing principle that the public interest is served by open court proceedings, we do not believe that the public interest is served by subjecting individuals in bankruptcy to identity thieves and unscrupulous marketing. Although bankruptcy court personnel and trustees require this information to perform their duties, access to social security numbers, bank account numbers, credit card numbers and other personal information on the Internet would seem to invite abuse. We are also concerned that sharing and selling of information derived from the bankruptcy process on the Internet will allow for more extensive profiling of individuals. Pieces of information that had little meaning when viewed separately are now being aggregated which results in extensive profiling of individuals.
- < (The Center for Democracy and Technology) - There may be legitimate public interest considerations for providing aggregate reports, stripped of information that may identify specific individuals, on debtors' interactions with the bankruptcy system and creditors.

Comments - Information Service Companies:

- < (Individual Reference Services Group) - It is important to be mindful of the long-standing American tradition of open access to public record information, and for individual reference service companies to have access to full identifying information of debtors. For example there are currently over 2,700 Robert Smiths in New York. Without identifying information it would be difficult to distinguish between the different Robert Smiths and determine which is in bankruptcy.

Comments - Credit Card Companies/Financial Services Associations:

- < (MasterCard) - There are at least three categories of private sector parties who must have the right to access bankruptcy information: 1) creditors and others whose interests are affected by the debtor's bankruptcy case; 2) creditors and other businesses who may consider doing business with the debtor; and 3) the general public and its representatives. Information that debtors file to justify obtaining bankruptcy relief, including account numbers and social security numbers, must be made available to the public. Restrictions on this information will harm consumers. For example, a common problem that occurs if social security numbers are not publicly available is that one consumer's information is erroneously associated with a consumer who has a similar name. We also believe that public record retrieval companies gather and make available information more efficiently than other mechanisms, such as the bankruptcy courts who lack the necessary resources to respond to requests from every party who may be interested in reviewing bankruptcy cases.

- < (The American Financial Services Association) - The increase in bankruptcy filings has resulted in dramatically increased costs for creditors' costs to monitor and participate in bankruptcy proceedings as well as to maintain programs to assure compliance with bankruptcy restrictions. For this reason, there should be efficient and low-cost access to accurate and complete information regarding 1) who has filed bankruptcy, 2) their financial information, and 3) the trustee's administration of the case.

Public disclosure of information provides for the following purposes: 1) permits creditors and other parties in interest to participate effectively; 2) encourages creditors and other interested parties to detect improper or fraudulent use of bankruptcy; and 3) assures public oversight and confidence in the bankruptcy system.

Comments - Credit Union Associations:

- < (Iowa Credit Union League) - Credit unions in our association differed on whether personal information needed to be made available to the general public, but most supported restrictions on access to personal financial information. Although the general public should have access to the fact that individuals have filed for bankruptcy, restrictions could be placed in the Code, so that financial information is made available to interested lenders/creditors but not to the general public. If available electronically, account numbers and social security numbers should be encrypted and accessible by a limited number of parties. Our credit unions support only the trustee having access to non-public information. Finally, some consideration should also be given to protect the privacy of those individuals who have to file for bankruptcy protection for medical or other catastrophic reasons.

- < (Ohio Credit Union League) - Our credit unions are concerned that restricting information to only a limited group, such as creditors, may be difficult to accomplish. Moreover, limiting who is a “creditor” may very well preclude other parties such as potential lenders from acquiring information necessary to determine credit availability. We suggest that restrictions regarding the access of information be adopted, and that these restrictions should not only limit who can access this information, but how it is accessed and for what purpose. In addition, these restrictions should include accessibility of account numbers and social security numbers, and their use. We are also concerned about the concept of commercial firms collecting, compiling electronically, and redistributing this information. Prior to this process being permitted, if at all, certain safeguards, restrictions and adequate protections should be in place in order to safeguard the non-public information.
- < (University of Hawaii Credit Union) - A debtor’s social security numbers should be available to prevent information from being recorded under individuals with the same names. However, other account numbers, such as bank accounts, may be deemed protected information.
- < (Navy Federal Credit Union) - If full information on personal bankruptcy were made freely available, we could more effectively administer our bankruptcy program. We believe limiting access to specific groups would prove costly, be difficult to administer, and would curtail the availability of needed information. Greater access also ensures more effective checks and balances in the system, and makes it more difficult to conceal inaccurate, incomplete, and fraudulent information. The entry of commercial firms into the business of aggregating and disseminating financial information gathered by the courts could reduce the cost of bankruptcy and enhance the availability of information.
- < (New Jersey Credit Union League) - Debtors have a greater privacy interest in information which, if widely disseminated, could result in identity theft and fraud. The NJCUL urges that strong measures be implemented to ensure protection of social security numbers, birth dates, account numbers, identification numbers, financial balances, asset lists, or any other information critical to identify theft prevention.
- < (Credit Union National Association) - Credit unions review information in bankruptcy schedules for possible indications of fraud and, if present, may proceed with adversary proceedings, which may lead to a judgement and relief from the automatic stay. These efforts would be hampered if the creditors’ access to the information were restricted. We also believe that the entry of commercial firms into the business of the aggregation and dissemination of information could reduce the cost of bankruptcy and enhance the availability of essential

information. However, our credit unions could support a general prohibition on the sale or other distribution of a debtor's financial information to those with no legitimate need for it.

Comments - Credit Bureaus:

- < (American Credit Bureaus, Inc.) - In addition to the facts of the bankruptcy case, it is important that the credit bureau industry have access to full identifying information. Without identifying information it would be difficult to meet the Fair Credit Reporting Act accuracy standards. It is already difficult to meet this standard as approximately 3 million last names change each year due to marriages and divorces.

4. The privacy issues raised by the collection and use of financial and other information in personal bankruptcy cases.

Comments - Courts and Government:

- < (Federal Trade Commission) - As a threshold matter, the Study Agencies may wish to consider to what extent highly sensitive information, such as a consumer's social security number, must be included in the public record data in light of the increased risk of identity theft and other illegal conduct. Consideration also should be given to prohibiting the commercial use by trustees of debtors' non-public data for purposes other than for which the information was collected (e.g., administering the bankruptcy case). Finally, we suggest evaluating the interplay between consumers' privacy interests and the Bankruptcy Code (e.g., where private customer information is protected by a company's privacy statement).

Common forms of identity theft include taking over an existing credit card account, taking out loans in another person's name, writing fraudulent checks using another person's name and/or account number, and opening a telephone or wireless service account in another person's name. Finance-related fraud constitute 80% of the identity theft victims who have filed a report with the FTC.

Most of these victims did not know how their personal information had been compromised although key pieces of information for identity thieves are an individual's social security number and date of birth, both of which are contained in bankruptcy filings.

- < (U.S. Courts - Mary Jo Obee) - Debtors have privacy interests in almost all of the information contained in bankruptcy court records.

There are 5 basic benefits of a public record system for court records: 1) public scrutiny of information forces integrity in the bankruptcy system; 2) helps maintain public confidence; 3) allows accurate and reliable data to be collected; 4) helps lenders to make more informed decisions on extending new credit which contributes to efficiencies in credit markets; and 5) allows creditors, as the new interest holders in the estate, to know everything about the debtor and the estate.

The costs of collecting and retaining data are twofold - the costs to the courts and the cost in lost privacy to debtors. Approximately 80 - 90% of the clerk's office annual staff expenses are associated with collecting, indexing, and filing information brought to the court, including expenses related directly to providing public access, costs of keeping records at the Federal Records Centers, and the costs of collecting, retaining and providing access to bankruptcy records. These duties must be performed to support the judges and therefore, are arguably a sunk cost.

The cost associated with lost privacy rights of debtors, creditors and others is harder to quantify. Unlimited access harms 1) privacy rights by providing greater access than necessary to achieve the public benefit; 2) limits the fresh start by placing a stigma on debtors, 3) contributes unnecessarily to threats of physical harm to parties; 4) contributes unnecessarily to identity theft, credit fraud and lender redlining; and 5) under new technology, may hinder individuals from seeking redress under the bankruptcy laws.

Individuals have no idea that anyone other than those listed in their schedules, the trustee, and the court will ever see their information.

- < (National Association of Attorneys General) - The potential for criminal misuse of personal information for identity theft and related crimes by stalkers and other persons seeking to cause injury is clearly present. The ability to obtain large amounts of information electronically at low cost makes the use of bankruptcy data for commercial purposes economically feasible in ways that were not previously possible. However, due to the protections afforded those in bankruptcy, it is also important that information be made widely available to other parties with interest in the bankruptcy proceeding. Thus, any treatment of privacy issues must balance a great number of competing interests. There are at least some measures that can be utilized to restrict release of data that is particularly susceptible to misuse. Other measures may include determinations of appropriate uses of information, requirements that parties certify that their use meet those requirements, and penalties for misuse. At a minimum, debtors should be given the right to determine whether commercial use is made of their information.

Typical privacy policies include the following: 1) collection limitation; 2) purpose specification; 3) use limitation; 4) security safeguards; 5) openness; and 6) accountability.

- < (Attorney General for the State of Connecticut) - The state has a duty to protect debtors and to ensure that the loss of privacy which is necessitated from filing for bankruptcy protection. This should not require debtors to surrender any privacy rights beyond that which is required for the administration of their cases.

Comments - Financial Institutions/Bankers Associations:

- < (American Bankers Association) - When an individual elects to use a public judicial process to eradicate or modify their financial obligations, they must expect that the fact of the filing as well as detailed personal financial information will become part of the public record. The potential adverse effects of third party access to detailed financial information are inherently less in bankruptcy situations because the debtor's credit lines will have been canceled or frozen, while their liquid assets are likely to be insubstantial or nonexistent. Therefore, concerns about aggressive marketing of new credit should be addressed through applicable

consumer credit and protection laws. Also, because bankruptcy offers a “fresh start”, legitimate lenders who wish to offer credit to affected individual should not face unnecessary obstacles.

- < (Bank of America) - We strongly advocate continued electronic access to information about bankruptcy filings. Adequate access to complete financial information is essential to a creditor’s ability to participate meaningfully in the bankruptcy cases and ensure the protection of valuable legal rights. Prior to the availability of electronic access to bankruptcy records, creditors faced numerous impediments in attempting to comply with bankruptcy laws. For example, debtors frequently fail to use correct addresses for their creditors. Without electronic access, creditors usually learn of an incorrectly addressed notice only after a stay violation has occurred.
- < (Consumer Bankers Association) - In most circumstances, the information filed by debtors provide creditors with the only basis for concluding whether they are entitled to recovery before their contractual rights are forever terminated. Therefore, it is imperative that creditors continue to have access to all bankruptcy information, with no restrictions, when their rights may be affected by the bankruptcy case. We also believe that the lack of accessibility to reliable identifiers (e.g., social security numbers, account numbers, addresses) will severely hamper creditors’ ability to conduct business. It will also harm consumers in that one consumer’s information could be erroneously associated with a consumer with a similar name or address.

Comments - Credit Card Companies:

- < (VISA) - Once individuals choose to involve the public sector by filing for bankruptcy protection they should expect the facts of this public judicial process to become part of the public record. There should be no interference with the ability of bankruptcy courts, trustees and others to compile and disseminate the debtor’s public record data and appropriate non-public data electronically or by other means. In regard to privacy, any potential adverse effect is less in the bankruptcy context than when an individual is solvent.

Comments - Attorneys/Attorney Associations:

- < (National Association of Consumer Bankruptcy Attorneys) - Given the broad dissemination of public record data which exists, debtors are entitled to have the information they provide protected from unnecessary disclosure. Debtors should be required to provide no more information than is necessary for: 1) creditors to identify the debtor in order to file a claim; 2) trustees to review debtor’s assets, their values, and the debtor’s right to the claimed exemption; and 3) the trustee to review the debtor’s ability to repay his/her debts.

Debtors are generally fearful about the bankruptcy process and are normally unfamiliar with the court filing system. The fact that these files may be available for review by any member of the public is probably not envisioned by debtors. Further, bankruptcy debtors should not be required to forego any expectation of privacy, except to the extent it is inconsistent with providing information on a “need to know” basis, with all possible precautions and protections in place.

Because a significant percentage of bankruptcy debtors are single parents with children, they are particularly likely to be victims of abuse or involved in acrimonious relationships with the other parent or former in-laws. Thus, these debtors need extra protection with regard to personal data included in bankruptcy files. In addition, the elderly may be more vulnerable to scams and could be targeted by using information from bankruptcy files.

In general, debtors expect that information which they provide directly to the trustee will be kept private by the trustees. Non-public data such as tax returns, paycheck stubs, and bank statements, would seriously compromise bankruptcy debtors if they were made available to creditors and the public.

The distribution of non-public bankruptcy information by the NACTT and Chase is already “for-profit”. To the extent that computer databases and networks are established to distribute this information, the pressure will be to include more and more data in the system in order to make the accumulation increasingly more valuable to the users. The value to the users becomes the focus, rather than the privacy of the debtor.

Comments - Privacy Rights Groups:

- < (Privacy Rights Clearinghouse) - In regard to non-public data, a person’s tax return is one of an individual’s most private documents. In fact, only IRS employees have access to this information on a need-to-know basis. Also, investigative files made by the trustee in the administration of cases might disclose the names of people interviewed and thereby, infringe on the privacy interests of people other than the debtor. These investigative files would also likely include conclusions and recommendations that may never ultimately be sanctioned by the courts. Privacy interests are affected if the distribution of non-public bankruptcy information is for profit. As soon as profits become involved, consumers will surely see a loss of privacy with regard to their financial records.
- < (Center for Democracy and Technology) - The public has an interest in knowing how the government conducts its business and, at times, such accountability requires the disclosure of personal information. In the context of bankruptcy, general information about the individual filing for bankruptcy may need to be available to the public to ensure that all those with a stake in the outcome may

participate. However, detailed information, currently considered public records under 11 U.S.C. §107(a) such as bank accounts and identifying numbers, credit card account numbers, social security numbers, and bank balances, are not necessary to ensure that parties with an interest are notified. The public disclosure of such information beaches personal privacy and places individuals at risk of additional financial harm. The exposure of the individual's personal information should be no greater than necessary to fairly serve the purpose of the bankruptcy process.

Comments - Information Services Companies:

- < (ChoicePoint, Inc.) - Under the Bankruptcy Code, papers filed in connection with a bankruptcy case as well as the courts' dockets are public records and are available in an automated database (e.g., Pacer). Publicly available bankruptcy files contain the debtor's name, address, social security number, and information regarding assets and liabilities. These personal identifiers are critically important in ensuring reputable, reliable and accurate information is delivered for sensitive decisions. This personal information is also used to combat identification fraud.
- < (Dolan Media Company) - Consumers who enter bankruptcy avail themselves of certain specific government protections, including additional privacy protection, that are not available to the citizenry at large. To ensure an effective bankruptcy system, information regarding the bankrupt should be made available to the public and to allow creditors to challenge the filing.

Comments - Investigative/Private Enforcement Organizations:

- < (Specialized Investigations; Office of Judgement Enforcement; Ramer and Ramer Judicial Judgement Recovery): All three of these entities oppose restrictions on the public's access to information held in bankruptcy filings. Those who petition the bankruptcy courts for protection from creditors cannot enjoy the same expectation of privacy in their financial affairs as those who honor their legal and financial responsibilities.

Comments - Private Individuals:

- < (James I. Shepard) - When a debtor files for bankruptcy, he/she waives any and all rights of privacy. The use of electronic filing of information and access to debtor data by the Internet is an absolute necessity to modernize the entire system. Those that abuse the use of the information should be dealt with under other laws.
- < (Steve Kurlansky) - Social Security numbers should not be accessible by other individuals or agencies; a separate personal identification number should be used.
- < (Sharman McCarvel) - An individual's personal and financial information should be limited to those who need to know, and then only with the individual's written permission. Social security numbers should never be public information.

- < (John Bins) - Court documents should be public record except when a compelling need is otherwise documented.
- < (Jay Legree) - Only parties in interest should be able to access personal information but only for the purpose specifically associated with the evaluation of the bankruptcy. All personal information should be destroyed after the bankruptcy is finalized.
- < (Steve & Liz Zeigler) - Personal information should be limited to those who need to know and should not be made accessible by the general public.
- < (Bev Williams) - As a former creditor, I believe that too much protection is given to the debtor. Bankruptcy is a public issue and information should therefore be publicly available. Public scrutiny of bankruptcy petitioners serves a useful purpose in helping eliminate bankruptcy fraud.

Comments - Credit Union Associations:

- < (American Financial Services Association) - Critics of the present system have suggested changes such as no longer requiring social security numbers or credit account numbers, restricting availability of sensitive information only to identified “creditors” or “parties in interest” and excluding the public, or limiting or discouraging the availability of bankruptcy information over the Internet. Any of these restrictions on open public access to bankruptcy court and trustee records would adversely affect the system’s ability to provide: 1) debtor benefits such as the automatic stay and post-discharge injunction; 2) adequate information so that those affected by bankruptcy can comply with its restrictions and protect their financial and property interests; and 3) assurance to the general public that the bankruptcy system is openly fair and deserves continued support.
- < (Iowa Credit Union League) - Upon filing for bankruptcy, debtors relinquish their privacy rights to a certain extent. To what extent debtors realize their personal financial information is going to be made public is unclear. Iowa credit unions believe that debtors would benefit from some additional disclosures by their attorney on what information will or will not be released to the general public when filing for bankruptcy protection. Perhaps, if the bankruptcy is not absolutely necessary, these disclosures up front may deter the filing.
- < (Ohio Credit Union League) - Bankruptcy information should be categorized as to public and non-public, and who may have access, such as creditors, and what factors are to be used to determine accountability. There should be restrictions and penalties on the use and disclosure of non-public information that is collected by the trustee. This information should only be available to creditors, or others that would qualify as “affected or interested parties” that are involved in the case. These creditors and others should be permitted to have full disclosure of the financial

information, but should be required to request for that information in writing from the trustee. This information and its use should be restricted and not disseminated to the general public by anyone who has access, including the creditors.

The privacy interests of bankruptcy information changes when such information is made available electronically in that anyone would be able to access that information and use it for numerous reasons which could be detrimental to the debtor. This especially applies to account numbers and other identifiable numbers and codes.

- < (Navy Federal Credit Union) - By requesting society to absolve one's obligations through personal bankruptcy properly and necessarily brings personal information into the public domain. Social security and account numbers should continue to be made publicly available. These numbers are essential to all involved in the administration of bankruptcy and we do not believe there are higher instances of fraud because of the public availability of these numbers.
- < (New Jersey Credit Union League) - In our view, few, if any, debtors are aware that when filing for bankruptcy their personal information is available to the public.
- < (Credit Union National Association) - If debtors are unable or unwilling to meet their financial obligations, they should expect to have their financial information scrutinized by any creditor that may suffer a financial loss. Debtors' attorneys should explain this potential loss of privacy when advising their clients as to whether bankruptcy is an appropriate course of action.

Comments - Academia:

- < (Professor Karen Gross) - Apart from 11 U.S.C. §107, there is little privacy protection directly within the bankruptcy laws. In my view, there needs to be a detailed assessment of the privacy protections afforded by non-bankruptcy law and how those protections are, if at all, impaired by wide access to bankruptcy files. Consideration should also be given to identifying particular information that requires greater privacy protection.

5. The effect of technology on access to, and the privacy of, a debtor's personal information.

Comments - Courts and Government:

- < (Federal Trade Commission) - The concern of the availability of social security numbers and other sensitive personal information is heightened with the increasing availability on the Internet of courts' public record data. If the Study Agencies determine that certain personal information should be kept on the public record, they may wish to consider the feasibility of restricting, in an appropriate manner, the commercial use of such public record data for purposes other than the bankruptcy.

Comments - Financial Institutions/Bankers Associations:

- < (American Bankers Association) - Under current law, all information in a bankruptcy case is public information. Information technology has the potential to make such information more readily available to the general public, and should be viewed as a substantial improvement in the judicial process. It is critical that lenders continue to receive timely notice of the social security numbers of bankruptcy petitioners. However, the ABA supports limiting public display of social security numbers because of the significant potential for identity theft.
- < (America's Community Bankers) - The most appropriate method for handling the accessibility of information derived from bankruptcy cases would be on a technology neutral basis. Thus, the rules are the same regardless of what medium is used to disclose the information

Comments - Privacy Rights Groups:

- < (Privacy Rights Clearinghouse) - If bankruptcy and trustee files are available online to the general public, there should be some limitations on the types of information generally available. Access to sensitive information should be limited to trustees and court personnel directly engaged in the administration of bankruptcy cases. This could be accomplished by the use of passwords or other means. For public access, the bankruptcy record should be limited to a "digest" of the key data elements. The full text document should not be available via the Internet to the general public.
- < (Center for Democracy and Technology) - The privacy of debtors is not protected under existing bankruptcy rules - with or without the automation of information. If computerized systems are designed without an eye towards protecting privacy, they can exacerbate existing privacy loopholes and present unique challenges to protecting privacy. To gain the protection afforded by the bankruptcy system, individuals must reveal the intimate details of their household finances (e.g., debts, spending habits, assets). Such information is necessary for the bankruptcy system to fairly structure relief for debtors and secure payments for creditors. However, much of this information is also available to any entity that seeks it. It is hard to imagine

how such unmediated access serves the interest of society, the debtor, the creditor, or the bankruptcy system.

Comments - Information Services Companies:

- < (The Individual Reference Services Group) - Public record information is already readily available at government offices. The computerization of this information has simply made access less costly and more convenient.

Comments - Credit Union Associations:

- < (New Jersey Credit Union League) - It is unlikely that public access to debtors personal information at the local bankruptcy court would affect a debtor's choice to file bankruptcy. However, making this information available on the Internet would expose debtors, who are already in precarious financial positions, to an enhanced risk of identity theft. This unintended result outweighs any possible benefits. Access to information remains important to truly interested parties, but there is no substantial reason to make this information available to non-interested parties.
- < (Credit Union National Association) - The ability to obtain information electronically will reduce the credit union's costs associated with traveling to the courthouse and of copying the necessary information. However, we recognize that consumer privacy has been compromised to some extent and thus, could possibly support some modest restrictions (e.g., health of the debtor) to the access of information that is submitted in the bankruptcy process. These restrictions, however, would only be acceptable as long as they in no way impacted a credit union's ability to have unfettered access to the information they need.

If bankruptcy information is available electronically, it may be acceptable to secure this information by requiring the use of a password. Restricting information to only those with a legitimate interest should minimize the misuse of information. Although we recognize that social security and account numbers may be sensitive and could be used by others for fraudulent purposes, this risk may be minimized because those interested in committing theft are generally not interested in assuming the identity of a person in bankruptcy.

Comments - Academia:

- < (Professor Karen Gross) - The possibility of electronic access to personal information changes the cost in a dynamic way. Another dimension to this issue is the selling of data. In my view, clear policy positions on data ownership need to be developed, and policies concerning both data access and data dissemination determined.

6. Business or governmental models that can provide access to, and protect debtors' privacy interests in, bankruptcy records.

Comments - Financial Institutions/Bankers Associations:

- < (Consumer Bankers Association) - 11 U.S.C. §107(a) of the Bankruptcy Code requires that “a paper filed in a case under [the Code] and the dockets of the bankruptcy court are public records and open to examination by an entity at reasonable times without charge”. The only instances when the court may decline to make information publicly available is: 1) if the information is a trade secret or confidential research, development, or commercial information, or 2) to protect a person with respect to scandalous or defamatory matter. Thus, the law requires all information filed in connection with a bankruptcy proceeding, such as a debtor's name, address, and account numbers, to be made publicly available.

Comments - Information Services Companies:

- < (The Individual Reference Services Group) - The Supreme Court has observed that “knowledge about solvency and the effect and prevalence of bankruptcy certainly would inform citizen opinions about questions of economic regulation”. Ensuring broad distribution of accurate financial information comports with the fundamental First Amendment premise that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.” *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* 472 U.S. 749, 787-789 (1985)

Comments - Privacy Rights Groups:

- < (Center for Democracy and Technology) - The 1973 Code of Fair Information Practices developed by the Department of HEW is a useful starting point for reconsidering the information policy of the bankruptcy system. In general, the Code requires that: 1) data be collected for legitimate and articulated purpose; 2) only data necessary to support the purpose be collected; 3) data only be used and disclosed to advance the purpose; 4) the individual be able to access and correct personal information; and 5) the collecting entity secure the information it maintains. The Code supplied the intellectual and statutory framework for the Privacy Act of 1974, as well as subsequent privacy legislation.
- < (Privacy Rights Clearinghouse) - The 1973 Code of Fair Information Practices (FIP) is a starting point. However, we prefer the FIPs developed by the Canadian Standards Association (CSA). These closely parallel the Organization for Economic Cooperation and Development (OECD) and the European Union Data Protection directive. The CSA code contains these principles: accountability, identifying purposes, consent, limiting collection, limiting use-disclosure-retention, accuracy, security safeguards, openness, individual access, and challenging compliance. The Federal Trade Commission has developed an abridged version of five FIPs: notice, choice, access, security, and enforcement.

Comments - Credit Card Companies/Financial Services Associations:

- < (MasterCard) - Congress recognized the importance of making bankruptcy information publicly available when it enacted the Bankruptcy Code of 1978. In addition, Congress has consistently recognized the need for creditors to have access to data related to bankruptcy as part of fair and accurate risk assessment. 15 U.S.C. §168(a)(1), 1681c(1999). Bankruptcy courts have echoed this sentiment which has been articulated as follows: “The legitimate financial interest of businesses will be frustrated if the filing of a bankruptcy cases is maintained on a confidential basis. The need of the public to know of the filing of the bankruptcy cases. . . outweighs the debtors’ desire to avoid the embarrassment and difficulties attendant to the filing of the bankruptcy. In re Laws, 1998 WL 541821 at *715(Bankr.D.Neb. 1998).
- < (American Financial Services Association) - The Constitution significantly limits any attempt to make bankruptcy information inaccessible to creditors, other interested parties or the public. It also does not require creditors and others to comply with restrictions, such as the automatic stay and post-discharge injunction, without giving them adequate information from the court. Thus, on balance, no new regulation restricting access appears to be appropriate in light of the substantial benefits debtors receive from bankruptcy and the needs of the bankruptcy system, those affected by it, and the public for access to the information that the debtor provides.

Comments - Credit Unions Associations:

- < (Iowa Credit Union League) - Under the Fair Credit Reporting Act, permissible uses of an individual’s credit report are detailed. Similar restrictions could be detailed in the Bankruptcy Code, including providing examples of authorized users and the permissible uses of such information.
- < (American Credit Bureaus, Inc.) - The Fair Credit Reporting Act (FCRA) governs consumer information companies that provide credit and mortgage reports, fraud prevention and risk management products, tenant and employment screening services, check fraud and verification services, and collection services. The FCRA provides a standard of accuracy regarding this information, and we believe it also ensures confidentiality.

7. Principles for the responsible handling of information in bankruptcy records, and recommendations for any policy, regulatory, or statutory changes.

Comments - Financial Institutions/Bankers Associations:

- < (American Bankers Association) - The utilization of technologies that enhance the dissemination of public information should be viewed as a positive development. We oppose any attempts to eliminate or restrict the currently available public information. We also oppose any attempt to restrict the electronic access to this public information, and believe any such attempt would likely impose substantial and unnecessary burdens on the court and trustee system. We support allowing bankruptcy data to be aggregated and distributed by third parties for a reasonable fee.

Comments - Attorneys/Attorney Associations:

- < (National Association of Consumer Bankruptcy Attorneys) - Bankruptcy data should be protected in the following ways:
 - Sensitive data about the debtor and non-filing parties which is necessary for the creditors and trustee to have should be compiled on separate documents which are available to them, but not available to the public;
 - Serious penalties should be imposed on creditors that use any information received in connection with the bankruptcy filing for any purpose other than to collect a non-dischargeable debt directly from the debtor;
 - Trustees should be held liable for disseminating or allowing dissemination of sensitive information to anyone other than the debtor or the debtor's attorney;
 - Trustees should be prohibited from releasing case administration and disbursement data to anyone except the debtor, the debtor's attorney, and a listed creditor in the case; and
 - Any entity which owns the hardware upon which any information described as protected is stored, or who operates an Internet-site containing such information, should be held liable and subject to serious penalties if it accesses or uses such stored data in any way.
- < (Mary Jeffrey - attorney) - There is a particular and pressing need to protect the privacy of victims of domestic abuse. For these victims, the bankruptcy system should provide protection and confidentiality, particularly regarding the whereabouts of the victim. This could be accomplished by creating a lock box system for receiving mail by using the U.S. Trustee's (or some other neutral party) address for the victim on the petition.
- < (Michael Wilson - attorney): It is important to make general debtor data available without identifying the debtors, possible by assigning confidential numbers to files. Access to the actual case file information should be restricted to the

trustees, attorneys of record and people who show adequate cause. The selling of customer lists would appear to be acceptable if the information was not submitted with an expectation of privacy, or if the purchaser is engaged in a similar occupation and would be bound by a confidentiality policy.

- < (Elizabeth Costello - attorney): It is a convenience to have bankruptcy information available on the Internet. If there are concerns about privacy, some of the information could be password-protected and its access could be tracked to identify misuse of the information.

Comments - Privacy Rights Groups:

- < (Center for Democracy and Technology) - The information policy should not be taken to suggest that, unless there is a compelling privacy interest, personal information collected through the bankruptcy process should be publicly accessible. An information policy should be in favor of protecting the rights of the individual citizens who interact with the bankruptcy system by limiting the use and disclosure of personal information to those necessary to support the bankruptcy process. Additional considerations of government accountability and public oversight should be considered as the information policy is formed, but the 1973 Code of Fair Information Practices should serve as the starting point.

Comments - Credit Unions Associations:

- < (New Jersey Credit Union League) - We are concerned about organizations in bankruptcy being able to sell consumer information regarding former customers, and recommends that appropriate actions be taken to ensure that consumers' rights are adequately protected.